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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

KRISHAN K. GOPAL

Plaintiffs,

vs.

**KAPIL LUTHER, BRIKENA E.
LUTHER CALIFORNIA RELIEF LLC,**

and DOES 1-50 inclusive

Defendants

Case No. 2:21-cv-00735-KJM-CKD

**DEFENDENTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS MOTION
TO REMAND; PROOF OF SERVICE**

I. Introduction

Plaintiff Krishan Gopal and Defendant Kapil and Brikena Luther ("Defendants Luther") are involved in a dispute concerning a Purchase and Sale Agreement ("PSA") under which Defendants Luther agreed to transfer their respective membership interests in California Relief, LLC ("CRL"), and Plaintiff's contention that he has fulfilled all of his obligations under the PSA. Plaintiff's Complaint consists of four causes of action: (1) Breach of Contract against Defendants Luther; (2) Fraud against Defendants Luther; (3) Breach of Fiduciary Duty against Defendants Luther; and (4) Declaratory Relief against Defendant CRL. Defendants Luther removed this

1 action to Federal Court on the basis of diversity jurisdiction, which Plaintiff opposes.

2 Plaintiff contends the removal of this action to Federal Court was improper because no
3 basis for removal appears on the face of the Complaint. The Memorandum of Points and
4 Authorities filed by Plaintiff in support of his contention asserts that this Court should remand
5 this case on the basis of: (1) illegality of purpose; (2) abstention; and/or (3) diversity of
6 Citizenship. While Plaintiff identifies illegality of purpose and abstention as two separate points
7 they are in actuality, based on Plaintiff's Memorandum, one point as Plaintiff is arguing that this
8 Court should abstain from exercising jurisdiction because cannabis is illegal under the Controlled
9 Substances Act of 1970.

11 II. Legal Analysis

12 a. This Court should Not Exercise the Extremely Narrow Doctrine of Abstention

13 As detailed below, abstention is an extremely narrow doctrine, and it should not be
14 invoked in these proceedings, especially given that this dispute should be in arbitration, or
15 alternatively should be stayed pending the resolution of the arbitration previously filed by
16 Defendants Luther against Plaintiff and the other member of CRL, Rakesh Rana.

17 Abstention from the exercise of federal jurisdiction is the exception, not the rule, and it is
18 an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy
19 before it. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 14, 103 S. Ct. 927,
20 936, 74 L. Ed. 2d 765 (1983) . Abdication of this obligation can be justified under this doctrine
21 only in the exceptional circumstances where the order to the parties to repair to the State court
22 would clearly serve an important countervailing interest. *Id.* Plaintiff fails to establish the
23 significant justification required for this Court to decline to adjudicate the controversy before it.
24 Therefore, Plaintiff's request that this Court abstain from exercising jurisdiction should be denied.

25 In his first point, Plaintiff contends this Court should decline to exercise jurisdiction over
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1 this matter because of the illegality of the subject matter. In support of his argument, Plaintiff
 2 cites primarily to three cases: *Bart III v. ACC Enterprises*, 2020 WL 1638329 (D. Nev. Apr. 1,
 3 2020); *Polk v. Gontmakher*, 2020 WL 2572536 (W.D. Wash. May 2, 2020); and *Left Coast*
 4 *Ventures v. Bill's Nursery, Inc.*, Case No. C19-1297 MJP (W.D. Wash. Oct. 31, 2019). In *Bart*
 5 *St. III*, the Court held that certain provisions of the contract at issue in that case, the right of first
 6 refusal and operating capital terms were several from the rest of the contract as a result of their
 7 illegality, but the Court did not dismiss the case or remand the case to State court. *Id.* Instead, the
 8 Court noted that federal courts do not take a “black and white” approach to enforceability of
 9 contracts as a result of illegality, and that there are situations involving marijuana that do not
 10 mandate illegal conduct. *Id.* Specifically, the Court cited the case of *Mann v. Gullickson*, 2016
 11 WL 647315 (N.D. Cal. 2016) and summarized the case as “explaining that payment for the
 12 purchase of a marijuana business “does not require [defendant] to possess, cultivate, or distribute
 13 marijuana.... [t]hus...ordering payment on the parties’ contract would not mandate illegal
 14 conduct.” It is clear from *Bart Street III* that simply because the business of CRL involves
 15 cannabis does not mean that the PSA is automatically void, either in whole or in part, and it is
 16 clear that at least in *Bart Street III*, the Court did not deem it necessary to abstain from exercising
 17 jurisdiction even if a portion of the dispute involved illegal subject matter. Defendants would
 18 request this Court take the same approach to this matter as did the Court in *Bart Street III*.

21 One of the other main cases cited by Plaintiff, *Polk v. Gontmakher*, is clearly
 22 distinguishable from the current dispute before this Court. In *Polk*, the Court determined that the
 23 damages sought by Polk, future profits from the operation of a business, violated federal law, and
 24 therefore his complaint should be dismissed. *Polk v. Gontmakher*, 2020 WL 2572536 (W.D.
 25 Wash. May 2, 2020). The relief Plaintiff seeks this Court to Order is not future profits from the
 26 operation of CRL. Instead, Plaintiff’s requested relief is that Defendants transfer their
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1 membership interest in an LLC to Plaintiff, and that Defendant Kapil Luther return certain
 2 certificates and sign related paperwork required by the California Department of Food and
 3 Agriculture.

4 The final authority cited by Plaintiff in support of his abstention argument is *Left Coast*
 5 *Ventures Inc. v. Bill's Nursery Inc.*, 2019 WL 6683518, (W.D. Wash. Dec. 6, 2019). In *Left Coast*
 6 *Ventures*, the Court found that abstention was appropriate because the dispute would require the
 7 Court to evaluate state laws that are in violation with the Controlled Substances Act. *Id.*
 8 Interestingly, despite citing *Left Coast Ventures* in support of his argument Plaintiff fails to
 9 identify what California laws that are in conflict with the Controlled Substances Act, if any, this
 10 Court would need to interpret to resolve this dispute. Therefore, Plaintiff has failed to establish
 11 the required “important countervailing interest” of the state of California that would allow this
 12 Court, in its discretion, to abstain from adjudicating the controversy before it.

13 Additionally, Defendants would note that they are seeking that this Court either compel
 14 Plaintiff to submit to arbitration or to stay these proceedings until the previously filed arbitration
 15 between Plaintiff, Defendants, and the other member of CRL, Rakesh Rana, is resolved. This is
 16 an important point for two reasons. First, it cannot be genuinely contended that an Order from this
 17 Court compelling the parties to arbitrate or staying these proceedings until the arbitration is
 18 resolved would conflict with federal law, including the Controlled Substances Act. Therefore,
 19 there is clearly no “important countervailing interest” of the State of California that would
 20 support abstention by this Court. Second, there is a strong federal policy interest favoring
 21 arbitration. The Federal Arbitration Act is a congressional declaration of a liberal federal policy
 22 favoring arbitration agreements. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S.
 23 1, 24–25, 103 S. Ct. 927, 941, 74 L. Ed. 2d 765 (1983); *Mitsubishi Motors Corp. v. Soler*
 24 *Chrysler–Plymouth, Inc.*, 473 U.S. 614, 631, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985) (stating that

1 the Act reflects an emphatic federal policy in favor of arbitral dispute resolution.”).

2 As stated by the United States Supreme Court, abstention is an extremely narrow doctrine
3 that should be exercised in exceptional circumstances. *Moses H. Cone Mem'l Hosp. v. Mercury*
4 *Constr. Corp.*, 460 U.S. 1, 14, 103 S. Ct. 927, 936, 74 L. Ed. 2d 765 (1983) . Plaintiff has failed
5 to detail and explain why the current dispute constitutes such an exceptional circumstance.

6 Notably, Plaintiff’s only arguments are that cannabis is illegal, and that this case involves state
7 and local regulations needed to conduct a cannabis business lawfully. Plaintiff fails to identify
8 how a dispute concerning the PSA, and Plaintiff’s contention that Defendants should be required
9 to transfer their membership interest in an LLC, justify abstention by this Court.
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12 *b. Plaintiff Fails to State a Cause of Action against CRL, a non-party to the PSA*

13 In his final point, Plaintiff contends that CRL is a proper party to this action, and therefore
14 this case should be remanded. The lone count of Plaintiff’s Petition involving CRL is its request
15 for declaratory relief. Specifically, Plaintiff points to Paragraph 4 of its allegations which states
16 that “This action is to require Defendant CRL to perform promises to transfer ownership of CRL
17 including certain rights of ownership as set forth in the Purchase and Sale Agreement...” The
18 most glaring problem with Plaintiff’s argument is that CRL is not a party to the PSA. If CRL is
19 not a party under the PSA, then the question is: what promises made by CRL is Plaintiff referring
20 to? The simple answer is “none”, because CRL is not a party to the PSA and made no promises
21 thereunder.
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23 Plaintiff cites the case of *Tampone v. Richmond*, 10-11776, 2010 WL 3083539 (E.D.
24 Mich. Aug. 5, 2010) in support of his argument that CRL is a necessary party to these
25 proceedings. *Tampone* is clearly distinguishable from the present matter. In *Tampone*, the Court
26 denied a Motion to Dismiss for lack of diversity jurisdiction, but at the same time did state that an
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1 LLC, Merchant Assure, was not a nominal or formal party to the action. *Id.* at *8. The Court's
 2 reasoning behind its statement that Merchant Assure was not a nominal party was that the
 3 complaint alleged derivative claims on behalf of Merchant Assure. *Id.* at *5. That issue is not
 4 present in this case as there are no derivative claims being brought by Plaintiff on behalf of CRL.

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 6 This present matter is more akin to the case of *Roskind v. Emigh*, 2007 WL 981725 (D.
 7 Nev. April 2, 2007) which was analyzed by the *Tampone* Court. The Court summarized the case
 8 as:

9 The Nevada court in *Roskind* concluded that the limited liability company named
 10 as a defendant was a nominal party because the real dispute was between the sole
 11 members of the company over the dissolution and distribution of the company's
 12 assets. 2007 U.S. Dist. LEXIS 25972, at *7, 2007 WL 981725. “ ‘We will ignore
 13 the citizenship of nominal or formal parties who have no interest in the action and
 14 are merely joined to perform the ministerial act of conveying the title if adjudged
 15 to the complainant.’ ” *Id.* (quoting *Prudential Real Estate Affiliates v. PPR*
 16 *Realty*, 204 F.3d 867, 873 (9th Cir.2003)).

17 *Tampone v. Richmond*, 10-11776, 2010 WL 3083539, at *4 (E.D. Mich. Aug. 5, 2010).

18 As alleged in Plaintiff's Complaint, this dispute involves a dispute under the PSA, and Plaintiff's
 19 request to have the Court Order Defendants to transfer their membership interests to Plaintiff.

20 This matter is very similar to *Roskind*. The only action that CRL would take, if any, if the
 21 Plaintiff was successful in this matter would be to note the transfer of the interests from
 22 Defendants to Plaintiffs in its records. That is purely a ministerial act, and does not require CRL
 23 to be a party to these proceedings. Therefore, CRL constitutes a nominal party, and its citizenship
 24 should be disregarded for the purpose of analyzing whether this Court has diversity jurisdiction
 25 over this matter.

26 **III. Conclusion**

27 Plaintiff's Complaint concerns alleged violations by Defendants Luther of the PSA, and
 28 alleges that Plaintiff is entitled to damages well in excess of \$75,000. There is no dispute that
 Plaintiff's citizen is completely diverse from that of Defendants' Luther. As a result, the only

1 arguments relied on by Plaintiff in support of his Motion to Remand are that this Court should
2 exercise its discretion and invoke the extremely narrow doctrine of abstention because CRL is a
3 cannabis business, and that CLR, a non-party to the PSA, is a necessary party to this action. As
4 detailed in this Response, those arguments fall flat.

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6 First, abstention is an extremely narrow doctrine that is to be invoked only in exceptional
7 circumstances where remand to state court would clearly serve an important
8 countervailing interest. Plaintiff fails to specifically identify what that purported interest is, and
9 why remand is necessary to serve that interest. Therefore, this Court should not abstain from
10 adjudicating the controversy before it.

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12 Second, CRL clearly should be disregarded for the purpose of diversity of citizenship.
13 Plaintiff contends this controversy is a dispute concerning the PSA, but also claims that CRL, a
14 non-party to the PSA, is a necessary party to this action because the request for Declaratory Relief
15 “seeks relief to require [CRL] to perform its duties to transfer ownership and the rights laid out in
16 the PSA.” Again, and directly contrary to Plaintiff’s contention, CRL has no duties under the
17 PSA because it is not a party and did not agree to perform or refrain from taking action in the
18 PSA.

19
20 The citizenship of Plaintiff and Defendants Luther are completely diverse, and the amount
21 in controversy exceeds \$75,000. This Court should therefore deny Plaintiff’s Motion to Remand.

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23 Date: May 13, 2021

Signed: /s/ Michael C. Mapes

24 Michael C. Mapes
25 Mapes Legal, PC
26 Attorney for Defendants
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PROOF OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City of Grass Valley, County of Nevada, and my business address is 131 South Auburn Street, Grass Valley, CA 95945. On May 13, 2021, at Grass Valley, California, I served the attached document:

**1. DEFENDENTS' MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS MOTION TO REMAND**

on the following parties:

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By electronic mail delivery. I electronically served the documents listed above to the parties at the email addresses listed.

Via the Court's ECF System. I electronically filed the foregoing with the Clerk of the Court for the United States Court of for the Eastern District of California by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on May 13, 2021, at Grass Valley, California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: May 13, 2021

Signed: /s/ Michael C. Mapes

Michael C. Mapes

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